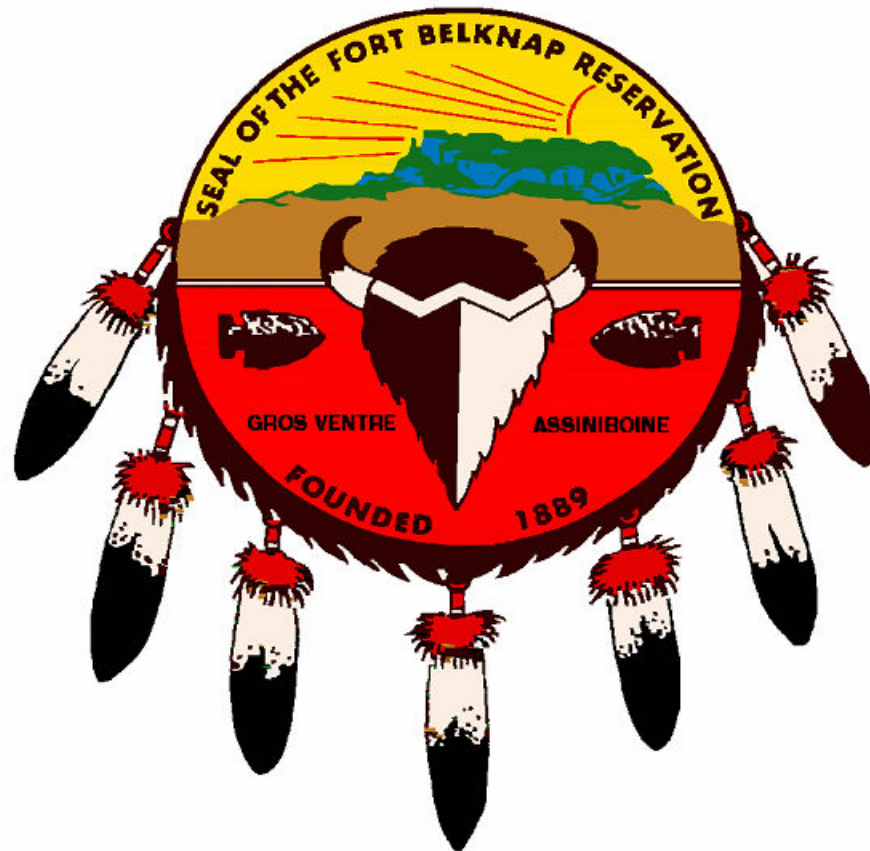


**CULTURAL RESOURCES PRESERVATION ACT  
OF THE  
FORT BELKNAP INDIAN COMMUNITY**



**PREPARED BY THE WHITECLAY SOCIETY  
JULY 1998**

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OF THE  
FORT BELKNAP INDIAN COMMUNITY**

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# **CULTURAL RESOURCE PROTECTION ACT**

## **BE IT ENACTED BY THE COUNCIL OF THE FORT BELKNAP INDIAN COMMUNITY:**

### **PART I SHORT TITLE, AUTHORITY**

#### **Section 1. Short Title.**

This Act may be referred to as the Cultural Resource Protection Act or CRPA of the Ft. Belknap Indian Reservation.

#### **Section 2. Authority.**

This Act is enacted pursuant to the Constitution and By-Laws **(as amended)** of the Fort Belknap Indian Community of the Fort Belknap Reservation of Montana, Article V, Section 1, Subsection (i), approved by the Secretary of the Interior, **“INSERT DATE”**.

This Act also implements the provisions of the following federal laws, which acknowledge and affirm certain tribal authority over cultural resources:

- (A) Archaeological Resources Protection Act, 16 U.S.C. ss 470cc(g) (2) and 470dd;
- (B) National Historic Preservation Act, 16 U.S.C. ss 470;
- (C) Native American Graves Protection and Repatriation Act, 25 U.S.C. ss 3001;
- (D) National Indian Forest Resource Management Act, 25 U.S.C. ss 3108.
- (E) Heritage Preservation - PL
- (F) Antiquities Act of 1906 - PL 209
- (G) American Indian Religious Freedom Act, PL 95-341, August 11, 1978
- (H) Native Americans Languages Act - Section 101, PL 101-477
- (I) American Indian Agricultural Resource Management - PL 103
- (J) (Reclamation)

## PART II FINDINGS AND POLICY

### **Section 1. Findings.**

The Community Council finds that:

- (A) By definitions of the Treaty of 1855, the Gros Ventre tribe, being one of the signatories, shall jointly, with other signatories of the treaty shall exercise full authority over aboriginal territories defined in said treaty, except the Fort Belknap Indian Reservation, whom the Gros Ventre tribe being residing signatories shall have sole authority over any/all cultural, traditional, archeological and ethnological properties prior to the establishment of the Fort Belknap Indian Reservation, 1888. All findings dating after the establishment of Fort Belknap Indian Reservation must include the Gros Ventre Cultural Committee and Gros Ventre Cultural Tribal Historic Tribal Historic Tribal Historic Preservation Officer,
- (B) the spirit and direction of the Gros Ventre and Assiniboiné tribes of the Fort Belknap Indian Reservation is founded upon and reflected in their cultural heritage;
- (C) the cultural foundation of the Gros Ventre and Assiniboiné tribes of the Fort Belknap Indian Community of the Fort Belknap Reservation should be preserved as a living part of our community life and development in order to give a sense of orientation;
- (D) cultural resources of the Gros Ventre and Assiniboiné Tribes of the Fort Belknap Community are being lost, substantially altered or destroyed, with increasing frequency;
- (E) in the face of ever increasing tribal community and economic developments, the present tribal governmental and non-tribal governmental programs to preserve the Fort Belknap Indian Community's cultural resources are inadequate to ensure future generations a genuine opportunity to experience, appreciate and enjoy the rich heritage of the Gros Ventre and Assiniboiné people of the Fort Belknap Reservation;
- (F) measures are necessary to foster conditions under which our modern society and our prehistoric, historic and cultural resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations **and**;
- (G) the self-governing capabilities, political integrity, health and welfare, and economic security of the Tribal Council will be enhanced and protected by the Community governmental control, regulation and preservation of irreplaceable cultural resources which are essential to the continued well-being of the Gros Ventre and Assiniboiné people and will be maintained and enriched for the **future generations of each tribe.**

## **Section 2 Policy.**

It is the policy of the Fort Belknap Community Council and designated Cultural Societies to protect traditional cultural resources by regulating undertakings upon protected lands and/or activities, which impact such tribal resources.

## **PART III GENERAL PROVISIONS**

### **Section 1 Definitions.**

For the purposes of this Act the following definitions will apply:

- (A) "Archaeological resource" means any material remains of past human life or activities, which are of archaeological interest. Such material remains shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, or any portion or piece of any of thereof found in an archaeological context. No item shall be overlooked as a cultural resource unless the White Clay Society and Wahtahpeh Ohmnegee review it.
- (B) "Board" means the Cultural Preservation Board of the Fort Belknap Indian Reservation.
- (C) "Culture" means the historical traditions, beliefs, practices, life ways, arts and social institutions of the Gros Ventre and Assiniboiné people of the Fort Belknap Indian Reservation.
- (D) "Burial material" means any item found at the burial site or with the human skeletal remains or any item associated with a burial or burial site.
- (E) "Burial site" means, except for cemeteries and graveyards protected under existing state law, any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which human remains were intentionally or unintentionally deposited as a part of the death rites or ceremonies of the culture of the Gros Ventre and Assiniboiné tribes.
- (F) "Cultural items" means human remains, associated funerary objects, unassociated funerary objects, sacred objects and cultural patrimony as defined by the Native American Graves Protection and Repatriation Act.
- (G) "Cultural resource" means native plant material, objects, or cultural or religious sites designated by the **Community Council, White Clay Society and Wahtahpeh**

**Ohmnegee** as having cultural significance. Cultural materials may include, but are not limited to, such things as roots, berries, paints, Indian medicines and waterways.

- (H) "Traditional cultural territories" means any area occupied by the Gros Ventre or Assiniboiné prior to signing of any treaty and all but not limited to any international boundaries.
- (I) "Traditional Cultural Property" means a place that is associated with cultural and religious practices or beliefs of the Gros Ventre or Assiniboiné people that:
  - (1) is rooted in Gros-Ventre or Assiniboiné history; and
  - (2) is important to maintain the continued cultural identity of the Gros Ventre or Assiniboiné peoples, and is included in, or eligible for inclusion on the Fort Belknap Cultural Register, including artifacts, records, and material remains related to such a property or resource.
- (J) "Human skeletal remains" means any part of the human body in any state of decomposition.
- (K) "Person" means any individual, partnership, association, corporation, and any other entity composed of individuals, and federal, Community, and state governmental entities or agencies.
- (L) "Tribal Historic Tribal Historic Tribal Historic Preservation Officers" means the Fort Belknap Cultural Tribal Historic Tribal Historic Tribal Historic Preservation Officers duly appointed by the Fort Belknap Community Council, one from the White Clay Society and one from the Wahtahpeh Ohmnegee.
- (M) "Religious or historic site" means any place or area, including, but not limited to, any geophysical or geographical area or feature:
  - (1) which is sacred to Gros Ventre or Assiniboiné people of the Fort Belknap Indian Reservation;
  - (2) where Gros-Ventre and/or Assiniboiné practitioners are required by their historic religion and traditional practitioners to gather, harvest, or maintain natural substances or natural products for use in their religious ceremonies or for spiritual purposes, including all places or areas where such natural substances or products are located; or
  - (3) which is utilized by Gros Ventre and/or Assiniboiné traditional native religious practitioners for ceremonies or spiritual practices.

- (N) "Protected lands" means all lands within the exterior boundaries of the Fort Belknap Indian Reservation, and all lands owned by the Fort Belknap Indian Community located off the Fort Belknap Reservation. This shall include all and future federal/state lands that are protected under any of the Public Laws as stated in Section 2, Authority of the Cultural Resource Protection Act.
- (O) "Responsible person" means the Cultural Preservation Board and the Cultural Tribal Historic Tribal Historic Preservation Officers who has decision-making authority over a particular undertaking on protected lands.
- (P) "Fort Belknap Register" means the Fort Belknap Register of Traditional Cultural Territories.
- (Q) "Community Council" means the duly elected governing body of the Fort Belknap Indian Community of the Fort Belknap Indian Reservation, Montana, as defined by the Fort Belknap Constitution.
- (R) "Undertaking" means a project, activity or program;
- (1) funded in whole or in part and is under the direct or indirect jurisdiction and/or supervision of a federal agency or Fort Belknap Community Council
  - (2) those carried out by or on behalf of the agency or department;
  - (3) those carried out with federal or Tribal assistance;
  - (4) those requiring a Federal or Tribal permit, license, or approval; and
  - (5) those subject to Tribal, State, or local regulation administered pursuant to a delegation or approval of a federal agency.

## **Section 2. Preservation Board.**

- (A) There is hereby established a Cultural Preservation Board, to be composed of six (6) members, with three (3) representatives from the White Clay Society and Wahtahpeh Ohmnegee. The Tribal Council shall choose the board members from a list of nominees provided by each Society. All Board members shall have a demonstrated special interest, experience, or knowledge in historic, prehistoric and cultural resources or related disciplines to provide for an adequate and qualified board. Members of the Board shall each hold office for a term of three (3) years and until his/her successor is appointed. Any vacancy on the Board shall be filled by the Community Council for the unexpired portion of the term from a list provided by the Society in which the vacancy occurred. Members of the Board shall not be personally liable for damages for actions performed within the actual or apparent



scope of the authority described herein.

- (B) Except as otherwise provided in this section, the Cultural Preservation Board shall be charged with carrying out all of the functions of the Community Council under this Act including, but not limited to, the issuance or denial of permits, the issuance of orders, the levying of penalties and the making of any and all decisions and determinations necessary in connection therewith. The Community Council, upon recommendation of the Board, is authorized to issue such rules, regulations and standards as necessary to carry out the purposes of this Act. Such regulations shall be promulgated in accordance to the procedures contained in the Tribal Administrative Procedures Act, Ordinance No.
- (C) The actions and decisions of the Cultural Preservation Board shall constitute final agency action appealable pursuant to Section 1, Part VIII of this Act.
- (D) The powers and duties of the Cultural Preservation Board include:
  - (1) Undertakings located off the Fort Belknap Indian Reservation of Montana. The Cultural Preservation Board is authorized to participate in the review or permitting process where a person has notified the Community of an undertaking or project which might affect any off reservation cultural resource, including but not limited to religious sites, archaeological resources, human skeletal remains, historic resources, cultural items and food and medicinal plants. The Cultural Preservation Board shall provide an annual report and summary of such consultation to the Community Council and each Society. The Community Council encourage the establishment of memorandum of agreement with appropriate persons and/or agencies to effectuate the policies in this Act.
  - (2) Undertakings on the Fort Belknap Reservation of Montana. The Cultural Preservation Board, is authorized and directed to:
    - (a) review any proposed undertaking that might affect any cultural resource, including but not limited to, native traditional/religious sites, archaeological resources, burial sites, human skeletal remains, traditional cultural territories, historic resources, cultural items, food and medicinal plants located upon protected lands;
    - (b) review requests for evacuation or removal of archaeological resources on protected lands;
    - (c) review requests for ethnographic work, studies or surveys on Gros Ventre or Assiniboine cultures;

- (d) issue permits as authorized by Part IV of this Act;
- (e) identify and nominate traditional cultural territories to the Fort Belknap Register and otherwise administer applications for listing traditional cultural properties and territories; and
- (f) maintain a cultural resource database;
- (g) provide general advice and guidance to the Cultural Tribal Historic Tribal Historic Tribal Historic Preservation Officers;
- (h) to accept on behalf of the Community, gifts, grants and fees to administer this Act. Such money may be expended to hire staff or consultants for the purpose of carrying out the powers and duties of the Cultural Preservation Board or for performing other appropriate functions;
- (i) to call upon tribal staff or elders having technical expertise for advice;
- (j) perform other duties as may be appropriate and necessary to implement this Act.

## **PART IV PERMITS**

### **Section 1. Permit Required.**

- (A) No historical or ethnographic work or studies relating to Gros Ventre or Assiniboine cultural resources may be conducted on protected lands without a permit and a representative present.
- (B) No excavation or removal of archaeological resources or cultural items on protected lands is allowed without a permit and a representative present.
- (C) No work may commence on an undertaking, which may affect cultural resources on protected lands until the Cultural Preservation Board has issued the responsible person a permit.
- (D) All work on an undertaking shall be conducted pursuant to the terms and conditions of the permit.
- (E) If an undertaking involves construction, a permit shall be prominently displayed at the construction site for the duration of construction activities.

## **Section 2. Permit Fees.**

An application for a permit shall be accompanied by payment of a non-refundable fee to cover all costs associated with permit issuance and administration. The amount of the fee shall be fixed from time to time by regulation, shall take into account the scope of the proposal.

## **Section 3. Application for Permit.**

- (A) Any person who intends to conduct an undertaking, which may affect cultural resources on protected lands, shall submit a written application to the Cultural Preservation Board.
- (B) The application shall be on a form provided by the Preservation Office. The application shall include, but is not limited to;
  - (1) location map, including a legal description;
  - (2) a specific description of the proposed undertaking;
  - (3) the purpose and need for the proposed undertaking;
  - (4) practical alternative methods of implementing the undertaking;
  - (5) the project dates and length of time necessary to complete the proposed undertaking;
  - (6) the name, address, and telephone number of the responsible person;
  - (7) and any other such information the Board deems necessary.

## **C. Proposal**

## **Section 4. Evaluation of Proposed Projects.**

- (A) The Cultural Tribal Historic Tribal Historic Tribal Historic Preservation Officer shall review an application for accuracy and shall determine if the proposal constitutes an undertaking. The Cultural Preservation Board may make such on-site investigations as are necessary to perform these duties.
- (B) If the Cultural Tribal Historic Tribal Historic Tribal Historic Preservation Officer determines that the proposal is not an undertaking the Cultural Tribal Historic Tribal Historic Tribal Historic Preservation Officer shall so state in a written notice to the responsible person within thirty working days of receipt of the application/proposal.
- (C) If the Cultural Tribal Historic Tribal Historic Tribal Historic Preservation Officer

determines that the proposal constitutes an undertaking, the Cultural Tribal Historic Tribal Historic Tribal Historic Preservation Officer shall submit the proposal to the Cultural Preservation Board who is responsible for conducting an on-site investigation;

- (D) The Culture Preservation Board will conduct a documental and oral history search and a field survey, when necessary, and will notify the Cultural Tribal Historic Tribal Historic Tribal Historic Preservation Officer of its findings within thirty working days.
- (E) Once the Cultural Tribal Historic Tribal Historic Tribal Historic Preservation Officer has been notified by the Culture Preservation Board of its findings and recommendations based on such investigation, the Cultural Tribal Historic Tribal Historic Tribal Historic Preservation Officer shall bring the application/proposal before the Cultural Preservation Board for evaluation and review.
- (F) The Cultural Preservation Board shall review all applications. The Cultural Preservation Board shall either approve, approve with modifications or alternatives, or disapprove an application and shall state its decision in writing to the responsible party (ies).
- (G) Upon approval or approval with modifications or alternatives, the Cultural Tribal Historic Tribal Historic Tribal Historic Preservation Officer shall forward to the responsible person a permit which shall pertain to the plan for the undertaking approved by the Cultural Preservation Board, and which may include provisions for avoidance or mitigation of adverse impacts associated with the undertaking.
- (H) This Part IV process should be completed prior to the approval of the expenditure of any Federal or Tribal funds on the undertaking or prior to the issuance of any Federal or Tribal license or permit. This does not bar any expenditure of funds on or any nondestructive planning activities preparatory to an undertaking before complying with this Part IV. The responsible person should ensure that the Part IV process is initiated early in the planning stages of the undertaking, when the widest feasible range of alternatives is open for consideration, such as;
  - 1. Audio recordings
  - 2. Video recordings

## **Section 5. Emergencies.**

- (A) All or part of a person's responsibilities under this Act may be waived if the responsible person determines that emergency action is necessary to prevent imminent harm to preserve human life or property and that such emergency action would be impeded if the responsible person was required to concurrently meet its cultural preservation activities and if the responsible person implements such

measures or procedures as are possible in the circumstances to avoid or minimize harm to cultural resources.

- (B) Waiver under Part IV, Section 5(A), shall not exceed the period of time during which the emergency circumstances necessitating the waiver exist.
- (C) The responsible person shall notify the Cultural Tribal Historic Tribal Historic Tribal Historic Preservation Officer in writing of the emergency undertaking within five days of commencement of such undertaking. The Notice shall include:
  - (1) the natural disaster or event necessitating emergency action; and
  - (2) the date and nature of the emergency action; and
  - (3) a description of the measure(s) taken to void or minimize harm to cultural resources or reasons why such measures were not taken.

#### **Section 6. Modification or Revocation of Permit.**

The Board may, upon finding of non-compliance or upon a finding of necessity, either modify or revoke a permit after the responsible person has been afforded notice and an opportunity to be heard.

### **PART V NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT**

#### **Section 1. Implementation.**

- (A) The Native American Graves Protection and Repatriation Act (NAGPRA) provides for the protection of Native American graves and for the return and repatriation of human remains, associated and unassociated funerary objects, sacred objects and objects of cultural patrimony. It is the policy of the Community to support the enforcement and implementation this Act.
- (B) The Cultural Preservation Board is vested with the authority to implement and administer the provisions of NAGPRA.
- (C) The Cultural Preservation Board is authorized to consult with federal and state agencies and others, regarding the proper handling and disposition of human remains, associated and unassociated funerary objects, sacred objects and objects of cultural patrimony.
- (D) The Community Council, upon recommendation of the Cultural Preservation Board may issue rules regarding the proper treatment and handling of human skeletal remains and cultural items, and procedures for the re-interment of human skeletal

remains.

## **Section 2. Inadvertent Discovery of Cultural Items.**

- (A) Any person who knows or has reason to know of the discovery of Native American cultural items, including human skeletal remains on federal lands within the Community's aboriginal territory and all lands within the exterior boundaries of the Fort Belknap Reservation of Montana shall immediately contact the Tribal Historic Tribal Historic Tribal Historic Preservation Officer.
- (B) If the discovery occurred in connection with an activity, including but not limited to, construction, mining, logging, and agriculture, the person shall cease activity in the area of discovery, and make all reasonable efforts to protect the items discovered.
- (C) The activity may resume only after consultation with the Cultural Preservation Board and after an agreement has been reached between the Culture Preservation Board and the landowner on whether the cultural items can be preserved in-situ or whether they need to be removed. This consultation must be completed within thirty 30 days of notice of the discovery to the Tribal Historic Tribal Historic Tribal Historic Preservation Officer, unless the landowner agrees to a longer period.
- (D) The disposition and control of human remains and cultural items removed under this section shall be determined in accordance to the priority established in Section 3002(a) of NAGPRA.

## **Section 3. Intentional Excavation.**

- (A) Any person who proposes an undertaking within the exterior boundaries of the Fort Belknap Reservation of Montana, which may result in the excavation of human skeletal, remains or cultural items shall apply for a permit pursuant to Part VI of this Act.
- (B) Federal agency officials who are required to give notice and consult with the Fort Belknap Indian Community regarding undertakings within the Community's aboriginal territory which may result in the excavation of human skeletal remains or cultural items shall provide notice to the Tribal Historic Tribal Historic Tribal Historic Preservation Officer.

## **Section 4. Enforcement.**

Violations of this part may be enforced in accordance to Part VII of this Ordinance and the Community may also request the U.S. Attorney or the Department of Interior pursue appropriate penalties in accordance to NAGPRA.

## **PART VI DISCLOSURE**

The Cultural Preservation Board and the Cultural Tribal Historic Tribal Historic Tribal Historic Preservation Officer shall withhold from disclosure to the public, information about the location, character, or ownership of a cultural resource if the Cultural Preservation Board or the Cultural Tribal Historic Tribal Historic Tribal Historic Preservation Officer determine that disclosure may:

- a. Cause a significant invasion of privacy;
- b. Risk harm to the cultural resource; or
- c. Impede the use of a religious site by practitioners.

## **PART VII ENFORCEMENT**

### **Section 1. Inspection.**

The Tribal Historic Tribal Historic Tribal Historic Preservation Officer or his duly authorized agent may inspect any undertaking for the purpose of determining compliance with this Act, its implementing regulations, or permit terms and conditions.

### **Section 2. Projects in Non-Compliance.**

- (A) Except for emergency actions, a project engaged in or by any person without a valid permit or in non-compliance with the terms of a valid permit shall be subject to proceedings brought by the Tribal Historic Tribal Historic Tribal Historic Preservation Officer for immediate abatement of a public nuisance.
- (B) Upon a finding that a non-complying undertaken constitutes a public nuisance, the Cultural Tribal Historic Tribal Historic Tribal Historic Preservation Officer may penalize the responsible person in an amount not less than \$25.00 or more than \$500.00 for each day that the responsible person continues to engage in or maintains a non-conforming undertaking at, in, or on protected lands.
- (C) In addition to any financial penalty imposed, the responsible person may be ordered by the Cultural Preservation Board to pay civil damages to include, but not limited to the following:
  - (1) Costs of restoring or replacing a traditional cultural property, burial site or archaeological resource or its equivalent, if possible.
  - (2) Enforcement costs associated with the enforcement of this Act.

- (3) Costs associated with the disposition of human skeletal remains or cultural items.
- (4) Costs associated with documentation, testing, and evaluation of the religious site, traditional cultural property, burial site, or human skeletal remains or archaeological site to assess the characteristics of the site.

## **PART VIII PROHIBITED ACTS**

### **Section 1. Destruction or Removal of Properties**

No person shall deface, remove or attempt to remove or possess any cultural signification resources such as;

- (A) Photographs
- (B) Hieroglyphics
- (C) Teepee Rings
- (D) Fasting Crib's
- (E) Patrimonial Artifacts
- (F) Prayer Cloths (tobacco ties or other obvious and non obvious offering)
- (G) Archaeological artifacts

### **Section 2 Aesthetic Beauty of Natural Resources**

No person shall deface or alter the natural existence and beauty of any areas of aesthetic value such as but not limited to;

- (A) Canyon Walls
- (B) Trees
- (C) Large Boulders

### **Section 3. Littering**

No person shall wantonly or knowingly litter cultural significant areas such as, mountain access areas protected as defined in Part **PART III, DEFINITION** of this act and also **Fort Belknap Tribes Criminal Offenses, Title V, Subsection 1.50, page V-14.**

### **Section 4. Enforcement**

A violation of above mentioned prohibitive act in excess such as determined by Cultural Tribal Historic Tribal Historic Tribal Historic Preservation Officer or the Cultural Preservation Board may result in restricted vehicular access to these areas.



**PART IX**  
**ALTERNATIVE AVENUES, SEVERABILITY, EFFECTIVE DATE**

**Section 1. Alternative Avenues**

Prior to any Cultural Preservation Board action the Cultural Tribal Historic Tribal Historic Tribal Historic Preservation Officer shall attempt to find a reasonable alternatives with any undertaken that may be in violation with any part of the Cultural Preservation Act of the Fort Belknap Tribes. Montana and/or including but not limited to **Part I, Section 2, Authority** of this act.

**Section 2. Judicial Review.**

Final decision on any appeal on Cultural Tribal Historic Tribal Historic Tribal Historic Preservation Officer's report/decision will be heard by a panel consisting of two (2) representatives of the White Clay Society and two(2) representatives of the Buffalo Chasers Society and two(2) members of the Fort Belknap Community Council one(1) Gros Ventre and (1) Assiniboine council member. This panel decision will be final to all appealed undertaken.

**Section 3. Severability.**

If any provisions of this Act or the applicability thereof are held invalid by any court of competent jurisdiction, the remainder of this Act shall not be affected thereby.

**Section 4. Effective Date.**

This Ordinance shall become effective, pursuant to the terms of Article \_\_, Section \_\_ of the Constitution and By-Laws of the Fort Belknap Indian Community of the Fort Belknap Reservation of Montana, upon promulgation of implementing regulations by the Tribes.

## C E R T I F I C A T I O N

The foregoing Act was adopted by the Fort Belknap Indian Community Council on \_\_\_\_\_, 1999, with vote of \_\_ for, \_\_ opposed, and \_\_ not voting, pursuant to the authority vested in it by Article V Section 1. (i) of the Constitution and By-Laws (as amended) of the Fort Belknap Indian Community of the Fort Belknap Reservation of Montana, said Constitution adopted and approved under Section 17 of the Act of June 18, 1934, (48 Stat. 984), as amended.

ATTEST:  
President, Fort Belknap Indian Community

Secretary-Treasurer, FBIC

APPROVAL:

Title:  
Bureau of Indian Affairs

DATE: